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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2003 SEP 25 P 4: 35

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR 408
DATE ACTIVATED: 11/21/02

EXPIRATION OF STATUTE OF
LIMITATIONS: 7/17/05

SOURCE: INTERNALLY GENERATED

RESPONDENT: Jose Casal

RELEVANT STATUTES
AND REGULATIONS: 2 U.S.C. § 441e
11 C.F.R. § 110.4(a)
11 C.F.R. § 111.24(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

STATE AGENCIES CHECKED: Florida Elections Commission

FEDERAL AGENCIES CHECKED: Immigration and Naturalization Service

I. INTRODUCTION

This matter concerns an allegation that Jose Casal, a Venezuelan foreign national, made \$2,500 in contributions during the 2000 Miami-Dade County mayoral election. On October 11, 2001, the Florida Elections Commission ("Florida Commission") received an anonymous letter alleging, "[Jose] Casal, using his position as owner of Victec Environmental Services, made its employees to write \$500.00 checks as campaign contributions for the last Miami-Dade mayoral race. Those employees were later reimbursed [sic], in cash, by Casal, for the amount of their checks." Florida Commission Referral at Exhibit 1. Upon receipt of this letter, the Florida Commission, together with the Miami-Dade Police Department, launched an investigation into those allegations and concluded that Casal had made five campaign contributions totaling \$2,500, through third parties, to the authorized campaign committee of Miami-Dade County Mayor Alex Penelas, a candidate in the 2000 mayoral election. The Florida Commission referred this matter to the Office of General Counsel after concluding that, in addition to Florida law, Casal violated 2 U.S.C. § 441e's prohibition on contributions by foreign nationals. Florida Commission Referral at p. 1 (citing 2 U.S.C. § 441e(a) and 11 C.F.R. § 110.4(a)).¹ After receiving the Florida Commission's referral, this Office internally generated this matter.²

¹ In Fla. Elec. Comm'n 02-103, the Florida Commission voted to find probable cause that Jose Casal violated Fla. Stat. Ann. § 106.08(1) (prohibiting contributions in excess of \$500) by making excessive contributions. See Florida Commission Agenda Results, August 15, 2002 (Attachment 1). The Florida Commission subsequently voted to approve a consent order providing a \$3,500 fine. Florida Commission Agenda Results, February 20, 2003 (Attachment 2).

² The Commission customarily treats referrals from other law enforcement agencies as internally generated matters. See 11 C.F.R. § 111.8. Upon receiving the Florida Commission's referral letter, which was styled as a complaint, this Office contacted the Florida Commission explaining our standard practice and the practical difference between a complaint and a referral. The Florida Commission agreed that the Commission should treat this matter as an internally generated agency referral. The relevant Florida Commission case numbers were FEC 01-265 and 02-103. To avoid confusion, any Florida Commission case number discussed herein will be referred to as "Fla. Elec. Comm'n."

1 Upon a review of the Florida Commission's Referral, supporting materials, and publicly
2 available information, this Office recommends the Commission find reason to believe that Jose
3 Casal knowingly and willfully violated 2 U.S.C. § 441e(a). Under the circumstances, we further
4 recommend the Commission authorize immediate conciliation efforts.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Jose Casal, a Foreign National, Appears to Have Violated 2 U.S.C. § 441e(a)**
7 **by Making Campaign Contributions.**

8
9 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits foreign
10 nationals from making contributions in connection with an election to any political office.

11 2 U.S.C. § 441e(a).³ The term "foreign national" refers to an individual who is not a citizen of
12 the United States and who is not lawfully admitted for permanent residence as defined by
13 8 U.S.C. § 1101(a)(20). 2 U.S.C. § 441e(b)(2).

14 The Act's prohibition on contributions by foreign nationals is not limited to federal
15 elections, but includes state and local elections. 2 U.S.C. § 441e(a); 11 C.F.R. § 110.4(a); *U.S. v.*
16 *Kanchanalak*, 192 F.3d 1037, 1048 (D.C. Cir. 1999) ("the language of § 441e does not
17 unambiguously cabin its language to reach only federal offices"). Further, a foreign national
18 violates the Act regardless of whether that individual makes a direct contribution or, like here,
19 contributes through other persons.⁴

³ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by BCRA. BCRA revised the Act's prohibition on contributions by foreign nationals in several ways, none of which would alter the analysis in this matter were the activity at issue to have occurred after BCRA's enactment. Most relevant here is that post-BCRA, the Act explicitly states that foreign nationals are prohibited from making contributions in connection with state and local elections in addition to federal elections.

⁴ Though the contributions in question were made in the names of others, this Office does not make any section 441f recommendations as this case involves a local election. Unlike sections 441b and 441e, section 441f appears to be limited to elections for federal office based on the definition of "contribution" at section 431(8) and the lack of any contravening language within section 441f. *See e.g.*, First General Counsel's Report in MUR 5208 (Amboy National Bank) at p. 13, fn. 14 (this Office made no section 441f recommendations as to bank's

1 The available information reveals that Jose Casal is a Venezuelan citizen and national,
2 and was one of the primary investors in the now-defunct Victec Environmental Services, Inc.
3 ("Victec"). See Florida Commission Referral at pp. 1, 4, 8, 9; and Attachment 3.⁵ According to
4 his own attorney, during the 2000 election cycle Casal sought to contribute \$2,500 to the
5 reelection campaign of Miami-Dade County Mayor Alex Penelas because he "wanted to help
6 Mayor Penelas within the Venezuelan community." See Florida Commission Referral at Exhibit
7 14, p. 3.⁶ During the Florida Commission's investigation, Casal's son-in-law, Luis Thula,
8 former President of Victec, told a Miami-Dade Police Detective that Casal "approached me and
9 tell me to find five people to make donation for \$2,500, and we divide these five checks in \$500
10 each check, and he gave me the money." *Id.* at Exhibit 3, p. 5; *see also* Exhibit 14, p. 3. Thula
11 asked several Victec employees if they would be willing to make contributions, and based on
12 Casal's commitment to reimburse them, they agreed. *Id.* Each of the employee contributors
13 subsequently wrote a \$500 check to the "Alex Penelas Campaign." *Id.* at Exhibit 14 p. 3, and
14 Exhibits 4-13.⁷

15 Thula presented the employee contributors' checks to a representative of the Penelas
16 Committee at a reception for the candidate on July 17, 2000. *Id.* at Exhibit 3, pp. 6-7. Within

contributions to state and local candidates, stating, "[i]t does not appear that section 441f applies to the making of contributions in connection with State or local elections").

⁵ According to Benedict Kuehne, counsel for Casal, Victec, and Thula, Victec ceased doing business in April 2001 "as a result of economic and business difficulties." See Florida Commission Referral at Exhibit 14, p. 2. Exhibit 14 to the Florida Commission's Referral is a 2/14/02 letter from Mr. Kuehne to the Florida Commission.

⁶ As stated above, the Florida Commission pursued two matters arising out of the same set of facts at issue here; Fla. Elec. Comm'n 01-265 and Fla. Elec. Comm'n 02-103. The respondent in the former was Victec, while in the latter, Casal was the respondent. Both parties were represented by the same attorney (Benedict Kuehne) before the Florida Commission. Mr. Kuehne sent a response to the Florida Commission in both cases. Referral Exhibit 14 is Victec's response in Fla. Elec. Comm'n 01-265, while Attachment 3 is Casal's response in Fla. Elec. Comm'n 02-103.

⁷ The employee contributors were Ray Rodriguez, Pedro Rodriguez (through his wife, Ana), Hector Munio, George Pattis, and Carolina Caceres.

1 days, Thula reimbursed the employee contributors with the cash provided by Casal. *See* Florida
2 Commission Referral at Exhibits 3-14. The following chart sets forth the dates on which the
3 contributions in question were made and reimbursed.

4
5 **EMPLOYEE CONTRIBUTORS' CONTRIBUTIONS TO**
6 **THE PENELAS COMMITTEE**

NAME OF CONTRIBUTOR	DATE OF CONTRIBUTION	DATE REIMBURSED	AMOUNT OF CONTRIBUTION
Reynaldo Rodriguez	7/14/2000	7/24/2000	\$500
Ana Rodriguez	7/14/2000	7/17/2000	\$500
George Pattis	7/18/2000 ⁸	7/18/2000	\$500
Hector Munio	7/13/2000	7/15/2000	\$500
Carolina Caceres	7/14/2000	7/17/2000	\$500
			TOTAL: \$2,500

7
8 *Id.*

9 Based on the available information – including respondent's counsel's own
10 characterization of the facts – it appears that the employee contributors' five \$500 contributions
11 should be attributed to Casal. *See* 2 U.S.C. § 441e(a) (prohibiting foreign nationals from making
12 contributions "directly or through any other person"). Moreover, it appears that Casal made
13 these contributions knowing that foreign nationals were prohibited from making campaign
14 contributions.

15 **B. Jose Casal's Violation Appears to Have Been Knowing and Willful.**

16 The Act penalizes more heavily violations that are knowing and willful. *See*
17 2 U.S.C. §§ 437g(a)(5)(B), (6)(c), and (d)(1). To be liable for a knowing and willful violation,
18 respondents must act with the knowledge that they are violating the law. *FEC v. John A.*

⁸ The Penelas Committee's Campaign Treasurer's Report to the Florida Commission states that Pattis' contribution was made on 7/17/2000. However, Pattis' check is dated 7/18/2000. *See* Florida Commission Referral at Exhibit 2, 8. This Office assumes that the check was presented to the Penelas Committee on 7/17/2000, but post-dated to 7/18/2000.

1 *Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). An inference of a knowing and
2 willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her
3 actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). The evidence need not
4 show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate"
5 a defendant's "state of mind," if there were "facts and circumstances from which the jury
6 reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.*
7 at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S.
8 838 (1989)).

9 This Office believes, based on its review of the Florida Commission's Referral,
10 supporting materials, and publicly available information, that Jose Casal may have knowingly
11 and willfully violated 2 U.S.C. § 441e(a). As the Florida Commission observed, "[i]t appears
12 [Casal] is aware that he, as a foreign national, is precluded by federal law from making any
13 political contributions . . . since he did not make any contributions to Mayor Penelas' reelection
14 campaign in his own name."⁹ See Florida Commission Referral, Statement of Findings at ¶¶ 18-
15 20 (Attachment 4). Indeed, Casal's decision to make five \$500 contributions demonstrates his
16 awareness of Florida's statutory contribution limit. See Fla. Stat. Ann. § 106.08(1). Further,
17 Casal's apparent use of third parties to make his contributions strongly indicates that he knew
18 federal law prohibited him, as a foreign national, from contributing to the Penelas Committee.

19 Casal – a former Venezuelan congressman and minister of commerce – purportedly
20 sought to contribute to the Penelas campaign to "help Mayor Penelas within the Venezuelan

⁹ Both Thula and his attorney represented during the Florida Commission's investigation that Thula did, in fact, make a \$500 contribution to the Penelas campaign. The Florida Commission found no evidence of this contribution. However, it appears that Thula is a lawful permanent resident of the United States as defined by 8 U.S.C. § 1101(a)(20). As such, he is entitled to make campaign contributions because lawful permanent residents are exempt from section 441e's general prohibitions. See also 2 U.S.C. § 441e(b)(2).

community.” See Florida Commission Referral at Exhibit 14, p. 3. However, the Florida Commission’s investigator indicated that Casal’s true motivation was that he “wanted access to the mayor’s office.”¹⁰ Florida Commission Referral at Exhibit 3, p. 10. In either case, if Casal truly believed the law permitted him to make a contribution to the Penelas Committee, he likely would have contributed in his own name rather than (or at least in addition to) making these contributions indirectly. Casal’s effort to launder his contributions is a clear indication that he knowingly and willfully violated the Act.¹¹

III. DISCUSSION OF PRE-PROBABLE CAUSE CONCILIATION

¹⁰ The investigator, a detective in the Miami-Dade Police Department, made this statement in an interview with Thula and indicated that this information came from interviews with the reimbursed employee contributors. Florida Commission Referral, Exhibit 3 at 10. Thula denied that the contributions were made to gain access to the mayor’s office. Rather, he stated, “we made the contribution because we live here and we wanted to meet some people and, you know, make...business[.]” *Id.*

¹¹ This Office recommends that only Casal be named as a respondent in this matter. At this time, we have no evidence to suggest the Penelas Committee had any knowledge that the contributions in question were derived from foreign national funds. Thus, this Office does not recommend the Commission name the Penelas Committee as a respondent. See e.g. Commissioner Thomas’ Statement of Reasons in MUR 4530 (DNC) (indicating “it would be better to read . . . a ‘knowledge requirement’” into section 441e). Indeed, the newly enacted BCRA regulations provide a knowledge requirement for the acceptance of foreign national funds.” 11 C.F.R. § 110.20(g) (2003). This Office also does not recommend either Thula or the employee contributors be treated as respondents. Though there is some support for the theory that Thula, by acting as a conduit for Casal’s contribution, “accepted” a foreign national contribution in violation of section 441e(a), this Office does not make any such recommendation. Both Thula’s and the employee contributors’ conduct are aptly captured by section 441f and 11 C.F.R. § 110.4(b)(1)(iii) – as making or facilitating a contribution in the name of another. However, as discussed *supra*, because this conduct occurred in the context of a local election, neither section 441f nor section 110.4(b) is available. Liability for these activities is the province of the Florida Commission which, to our knowledge, has not chosen to pursue either Thula or the employee contributors. As such, we would recommend the Commission exercise its prosecutorial discretion as to Thula and the employee contributors. Should this Office become aware of additional evidence that would change the analysis contained in this report, we will return to the Commission with an appropriate recommendation.

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24-04-407-3939

IV. CONCLUSION

For the reasons stated above, this Office recommends the Commission find reason to believe respondent Jose Casal knowingly and willfully violated 2 U.S.C. § 441e(a) by contributing \$2,500 to the Penelas Committee. We further recommend the Commission approve pre-probable cause conciliation.

V. RECOMMENDATIONS

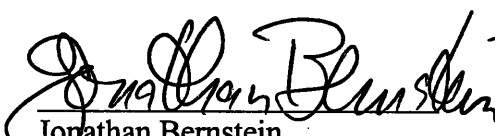
1. Open a MUR.
2. Find reason to believe Jose Casal knowingly and willfully violated 2 U.S.C. § 441e(a).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Jose Casal prior to a finding of probable cause to believe.
5. Approve the attached Conciliation Agreement.
6. Approve the appropriate letters.

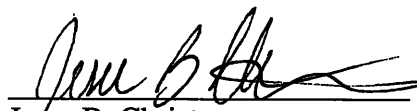
Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

September 25, 2003
Date

BY:


Jonathan Bernstein
Assistant General Counsel


Jesse B. Christensen
Attorney

Attachments:

1. Florida Commission Agenda Results, August 15, 2002.
2. Florida Commission Agenda Results, February 20, 2003.
3. June 20, 2002 Response from Jose Casal to the Fla. Elec. Comm'n.
4. August 23, 2002 Order of Probable Cause Statement of Findings in Fla. Elec. Comm'n 02-103.
5. Jose Casal Conciliation Agreement.
6. Factual and Legal Analysis.

Pre-MUR 408-551

FLORIDA ELECTIONS COMMISSION

AGENDA RESULTS

Orlando, Florida

August 15, 2002 -- 8:30 a.m. to 5:00 p.m.

	<u>Case No.</u>	<u>FEC Action</u>	<u>Vote</u>
1. CALL TO ORDER			
2. REVIEW OF MINUTES		Approved	9-0
Minutes of Meeting (May 9 and 10, 2002)			
3. OLD BUSINESS			
Commission Calendar for 2002		Changed November Commission meeting from November 7 and 8, 2002, to November 14 and 15, 2002. Changed the January 2003 meeting from Tallahassee to Miami and the May 2003 meeting from Miami to Tallahassee.	
List of Commission Members			
Chapters 104 & 106, Florida Statutes.			
4. NEW BUSINESS			
WILLFUL CASES			
<u>Informal Hearings</u>			
Josaphat J. Celestin	FEC 01-140	Motion to find: 6 counts of violating 106.07(5), 1 count of violating 106.08(3)(b), 2 counts of violating 106.11(3), 2 counts of violating 106.19(1)(d), 6 counts of violating 106.19(1)(c), & 10 counts of violating 106.19(1)(b). Motion to impose fine of \$15,000.	5-1
Fred Vandergraff	FEC 01-194	Motion to reduce fine to \$1000.	8-1
Catherine "Kitty" Ebert	FEC 01-296	Motion to find: 3 counts of violating 106.143(1) & 3 counts of violating 106.143(4)(a).	8-1

	FEC 01-308	a fine of \$200.	
Clarence Anderson Nesbitt	FEC 02-022	Motion to accept Consent Order with a fine of \$500.	7-0
Barry Jay Warsch	FEC 02-042	Motion to accept Consent Order with a fine of \$450.	7-0
Fred Tarrant	FEC 02-136	Motion to accept Consent Order with a fine of \$200.	7-0

Motions

Edward Pickett	FEC 01-270	Motion to approve staff's Motion for Default finding violations of: 1 count of violating 106.143(1) & 1 count of violating 106.143(4)(a). Motion to fine \$500.	6-0 6-0
Michael E. Glassburn	FEC 02-015	Motion to approve staff's Motion for Default finding violation of: 1 count of violating 106.07(1) and a \$1000 fine.	6-0
Roy Hardemon	FEC 02-016	Motion to continue case to allow Respondent 2 weeks to show proof he timely filed his termination report.	6-0
Cindy Doane Ross	FEC 02-017	Motion to approve staff's Motion for Default finding a violation of: 1 count of 106.141(1) and a \$1000 fine.	6-0
Cara Scherer	FEC 02-020	Motion to approve staff's Motion to Dismiss.	
Jacqui Colyer	FEC 02-021	Motion to approve staff's Motion for Default finding a violation of: 1 count of 106.141(1) and a fine of \$100.	5-0
N. Cty Civic Association and Anthony R. Criscenti, T.	FEC 02-044	Motion to approve staff's oral motion to withdraw Motion for Default.	
Mary Laurance	FEC 02-070	Motion to deny Respondent's Motion for Rehearing.	

Probable Cause Determinations

Failure to File Cases

John McKinnon	FEC 02-024 FEC 02-025 FEC 02-115	Motion to find PC of: 1 count of violating 106.04(4)(b) in each case.	7-0
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		106.071(1) & 106.143(4)(b).	
Greg Roland	FEC 02-091	Motion to find PC of: 2 counts of violating 106.143(3).	9-0
Edward B. Braddy	FEC 02-092	Motion to find PC of: 2 counts of violating 106.07(5), & to find NPC of violating 106.08(3)(a), 106.11(3), 106.147(1)(a) & 106.19(1)(d).	
Farm Sanctuary, Inc., and Gene Bauston, President	FEC 02-093	Motion to find PC of: 210 counts of violating 106.021(3).	9-0
<u>Jose Casal</u>	FEC 02-103	Motion to find PC of: 5 counts of violating 106.08(1).	6-0
Sylvie Kramer	FEC 02-120	Motion to find PC of: 2 counts of violating 106.07(5).	6-0

No Probable Cause Determination

Failure to File Cases

Linda Breed, Treasurer for the Workers World Party	FEC 02-117	Motion to find NPC of violating 106.07(2)(b).	8-0
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Other Cases

Equal Rights Not Special Rights and Perry W. Hodges	FEC 01-298	Motion to find NPC of violating 106.07(5).	8-0
H.E.L.P.S. Ministries of Broward, Inc., and Mark T. Davis, President	FEC 01-299	Motion to find NPC of violating 106.021(3).	8-0
Lowell K. Schmidt	FEC 02-031	Motion to find NPC of violating 104.071(1)(c), 106.143(1), & 106.143(4)(a).	8-0
Student Government Organization of UF and Marc Adler, President	FEC 02-045	Motion to find NPC of violating 106.071(1), & 106.071(1).	8-0
Jacqueline V. Pepper	FEC 02-095	Motion to find NPC of violating 106.07(5), & 106.09(1).	8-0
Alfred Zucaro, Jr.	FEC 02-096	Motion to find NPC of violating 106.11(3), & 106.19(1)(a).	8-0
Ryan A. Lipner	FEC 02-097	Motion to find NPC of violating 106.021(1), 106.023, & 106.07(5).	8-0
Sylvie Kramer	FEC 02-098	Motion to find NPC of violating 106.143(1), & 106.143(4)(a).	8-0
Atlantis Management Services, L.C. and Jeffrey K. Morganstine, President	FEC 02-099	Motion to find NPC of violating 106.071(1), & 106.143(4)(b).	8-0

FLORIDA ELECTIONS COMMISSION

** AGENDA RESULTS**

Miami, Florida

February 20, 2003 at 8:30 a.m.

<u>Case No.</u>	<u>FEC Action</u>	<u>Vote</u>
1. CALL TO ORDER		
2. REVIEW OF MINUTES		
Minutes of Meeting (November 14 & 15, 2002)	Adopted	5-0
3. OLD BUSINESS		
Commission Attendance	Susan MacManus, Chair Richard Heffley Sam Bell David Rancourt J. Courtney Cunningham Anne Jolley Byrd Joanne N. Tokely Jimmy T. Patronis Michele Springer	present present present absent present absent absent present present
Commission Calendar for 2003		
List of Commission Members		
Chapters 104 & 106, Florida Statutes.		
4. NEW BUSINESS		
WILLFUL CASES		
<u>Formal Hearings</u>		
<u>Informal Hearings</u>		
Mildred Armstrong	FEC 01-291 Motion to find: 5 counts of violating 106.143(1), 5 counts of violating 106.143(4)(a), & to impose fine of \$25.00.	6-0

Henry R. Matthews	FEC 02-116	Motion to find: 1 count of violating 106.141(1) & to impose fine of \$25.00 & file report within 30 days.	6-0
James P. Casey	FEC 02-123 02-125	Motion to find: 1 count of violating 106.141(1), 1 count of violating 106.07(2)(b) & to impose fine of \$2000.	6-0
Darnell Monroe	FEC 02-134 02-135	Motion to find: 1 count of violating 106.07(1), 1 count of violating 106.07(1), & to impose fine of \$50.00	6-0
Daniel C. Hall	FEC 02-138	Motion to find: No violation of 104.011(1) & No violation of 104.011(2).	4-1
John Hughes	FEC 02-143	Motion to find: 2 counts of violating 106.143(1), 2 counts of violating 106.143(4)(a), 1 count of violating 106.148, & to impose fine of \$25.00.	6-0

Final Orders/Consent Orders

<u>Jose Casal</u>	FEC 02-103	Motion to accept Consent Order with a fine of \$3,500.	6-0
Melvin Ashcraft	FEC 02-381	Motion to accept Consent Order with a fine of \$350.	6-0
Vanessa Carusone	FEC 02-385	Motion to accept Consent Order with a fine of \$550.	6-0
Rick Eggers	FEC 02-406	Motion to accept Consent Order with a fine of \$250.	

Motions

Corey Alston	FEC 02-019	Motion to approve staff's Motion for Default finding violation of s. 106.141(1) & \$1000 fine.	6-0
Tom Wells	FEC 02-062	Motion to approve staff's Motion for Default finding violation of s. 106.29(1) & \$1000 fine.	6-0
Monte Belote	FEC 02-114	Motion to approve staff's Motion for Default finding violation of s. 106.141(1) & \$1000 fine.	6-0

Motion #4

JON A. SALE
BENEDICT P. KUEHNE*

*BOARD CERTIFIED
CRIMINAL TRIAL PRACTICE AND
APPELLATE PRACTICE

LAW OFFICES OF
SALE & KUEHNE
PROFESSIONAL ASSOCIATION

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FORT LAUDERDALE OFFICE
LAS OLAS CENTRE, SUITE 1700
350 EAST LAS OLAS BLVD.
FORT LAUDERDALE, FL 33301-2229
954-524-1114

REPLY TO:

June 20, 2002

VIA MAIL AND FAX (850-921-0783)

Barbara M. Linthicum, Executive Director
Florida Elections Commission
Collins Building, Suite 224
107 West Gaines Street
Tallahassee, Florida 32399-1050

Re: Jose I. Casal
FC Case No. FEC02-103
Response to FEC Inquiry

RECEIVED
02 JUN 21 PM 3:16
FLORIDA
ELECTIONS
COMMISSION

Dear Executive Director Linthicum:

This letter constitutes the response of Jose I. Casal to the Florida Elections Commission's inquiry dated May 31, 2002. Mr. Casal welcomes the opportunity to assist the Florida Elections Commission in the referenced inquiry. Because the assertions raised do not give rise to any reasonable belief that a violation of law occurred, the Florida Elections Commission should close out this matter with a finding of no probable cause.

I. INTRODUCTION.

Jose I. Casal is a Venezuelan citizen who travels only infrequently to the United States. He was an investor in Victec Environmental Services, Inc., a Florida corporation, but has never been an officer, director, or employee of the company. Victec no longer functions as an operating entity.

Jose Casal has an outstanding history of public service in Venezuela. He served as a Senator in Venezuela, and was a Minister of Commerce under the administration of Venezuelan President Andres Perez from 1974 through 1977. He resigned his position as a Senator when Hugo Chavez was elected

Barbara M. Linthicum, Executive Director

June 21, 2002

Page 2

President of Venezuela in 1999 due to concerns about President Chavez's philosophy favoring increasing government authority at the expense of individual liberties. Mr. Casal is firmly committed to a democratic form of government in Venezuela.

Mr. Casal is not politically active in the United States and is not permitted to seek public office as he is not a United States citizen. He is unfamiliar with Florida or federal election laws, and has never received, read, or reviewed Florida or federal campaign finance requirements, including Chapter 106, Florida Statutes. Mr. Casal's only knowledge of election law comes from his extensive experiences as a Venezuelan elected official. Venezuela's election law requirements have no similarity whatsoever to the requirements imposed by Florida or Federal law, and provide no guidance as to what Mr. Casal could expect in the United States.¹ At no time did Mr. Casal intend to act in any manner which conflicted with Florida or federal election laws.

Jose Casal is and has always been extremely interested in good government, not only in Venezuela but throughout the world. Since his family resides in South Florida (his daughter and son-in-law are United States residents who live in South Florida), he has endeavored to familiarize himself with local government officials, especially those who exhibit the positive leadership which enhances the local community. One elected official in particular, Miami-Dade County Mayor Alex Penelas, appeared to Mr. Casal to be committed to making Miami-Dade County a better place in which to live and work. Mr. Casal was quite impressed with Mr. Penelas' willingness to serve all segments of the community, including foreign nationals.

II. VICTEC CAMPAIGN CONTRIBUTIONS.

¹ To date, Mr. Casal has not analyzed Florida or federal election campaign finance laws and has not compared those laws to Venezuelan legal requirements. Undersigned counsel has developed a very preliminary understanding of Venezuelan election law, and has identified no similarities to Florida campaign finance requirements.

ATTACHMENT 3
Page 2 of 3

Barbara M. Linthicum, Executive Director

June 21, 2002

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limitations on campaign contributions. Accordingly, he could not have committed a knowing and willful violation of § 106.08(1), Florida Statutes (2000).

The Statement of Findings in Case No. FEC01-265 provides no factual underpinning for a conclusion that Jose Casal violated § 106.08(1). The facts do not reflect that he acted illegally or with any "degree of conscious wrong" or "culpable carelessness on his part." *Sanders v. Florida Elections Commission*, 407 So. 2d 1069, 1070 (Fla. 4th DCA 1981). Because he made no contribution whatsoever to the Mayor Penelas campaign, he could not have knowingly and willfully exceeded Florida's contribution limitations to a single candidate. The Statement of Findings narrates no evidence that Mr. Casal actually reimbursed any of the Victec employees who contributed to the Mayor Penelas campaign. None of the contributing Victec employees were asked by Jose Casal to make a contribution, and no employee contributed on behalf of Mr. Casal.

Even now, Mr. Casal is unaware of the limitations imposed by Florida law on campaign contributions and other political activity. Although he has always been interested in making certain that good candidates run for public office, he is more focused on political activity in Venezuela than in Florida. By reason of the FEC inquiry, he is certainly aware that Florida campaign finance law is complicated and burdensome. If he chooses to become involved in Florida political activity, he will work diligently to comport his conduct in a manner consistent with legal requirements. While he still has not reviewed the requirements and/or prohibitions of Chapter 106, the filing of this complaint against him has provided him with an awareness of the provision limiting campaign contributions to \$500 (§ 106.08(1)(a)), as well as the provision prohibiting contributing through or in the name of another person (§ 106.08(5)).

Under Florida law, a negligent failure to adhere to election law requirements does not constitute a violation of Florida's campaign finance laws. See, e.g., *Fulton v. Division of Elections*, 689 So. 2d 1180 (Fla. 2d DCA 1997) (negligent failure to adhere to § 106.19, requiring that pamphlets state "paid political advertisement," is insufficient to find willful violation of election laws). As a Venezuelan citizen, Mr. Casal had no inkling that Florida election law was so restrictive. Nonetheless, because he made no campaign

ATTACHMENT 3

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EXHIBIT 13

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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Jose Casal

Case No.: FEC 02103

ORDER OF PROBABLE CAUSE

THIS CAUSE came on to be heard before the Florida Elections Commission at its meeting held on August 15, 2002, in Orlando, Florida.

Based on the Complaint, Report of Investigation, and Statement of Findings, which is incorporated in its entirety as a part of this order, the Commission finds that there is **probable cause** to charge the Respondent with :

Five separate counts of violating Section 106.08(1), Florida Statutes, prohibiting a person from making contributions to a candidate in excess of \$500 for each election.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on August 23, 2002, in Tallahassee, Florida.

Susan A. MacManus

Susan A. MacManus, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

NOTICE OF RIGHT TO A HEARING

As the Respondent, you are entitled to a hearing before the Florida Elections Commission or the

Division of Administrative Hearings on those violations of the Florida Statutes on which the Commission has found probable cause. The hearing is held according to Chapter 120, Florida Statutes, and Chapters 2B-1.004 and 28-106, Florida Administrative Code. To obtain a hearing, you must send a written petition that complies with the rules to the Commission Clerk, Patsy Rushing, requesting a hearing. The address of the Commission Clerk is 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050. The telephone number is (850) 922-4539. **The Clerk must receive your petition within 30 days of the date that you received this order.** The Clerk will provide you a copy of Chapters 2B-1 or 28-106, Florida Administrative Code, upon request.

In the petition, you may request either a formal or an informal hearing before the Commission or a formal hearing before the Division of Administrative Hearings. If you request a formal hearing, the Commission reserves the right to refer the case to the Division of Administrative Hearings. To determine whether to request a formal or an informal hearing, review Chapter 28-106, Florida Administrative Code. No mediation is available.

To request an **informal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.301(2), Florida Administrative Code. At the informal hearing, you will have the right to make written or oral arguments to the Commission concerning the legal issues related to the violation and the potential fine. Live witness testimony is unnecessary at an informal hearing.

To request a **formal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.201(2), Florida Administrative Code, including a statement of all issues of material fact in the Statement of Findings that you dispute. At the formal hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

IF YOU DO NOT TIMELY FILE A WRITTEN PETITION REQUESTING A HEARING, YOU WILL HAVE WAIVED YOUR RIGHT TO BOTH A FORMAL AND AN INFORMAL HEARING. THIS CASE WILL BE SCHEDULED FOR A COMMISSION MEETING, AND THE COMMISSION WILL CONSIDER THIS DOCUMENT, THE STATEMENT OF FINDINGS, AND THE REPORT OF INVESTIGATION AND ISSUE A FINAL ORDER THAT MAY INCLUDE A SUBSTANTIAL FINE.

Copies furnished to:

Phyllis Hampton, General Counsel
Benedict Keuhne, Attorney for Respondent (certified mail)
Miami-Dade Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

**FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS**

Case Number: FEC 02-103

Respondent: Jose Casal

Complainant: Keith Smith

On May 28, 2002, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the Complaint, the Report of Investigation, and this statement, the staff recommends that there is **probable cause** to charge the Respondent with:

Five separate counts of violating Section 106.08(1), Florida Statutes, prohibiting a person from making contributions to a candidate in excess of \$500 for each election.

Summary of Facts and Conclusions of Law.

1. Respondent is a Venezuelan national and owner of Victec Environmental Services, Inc. (Victec).
2. Victec is a solid waste management company. Luis Thula is the president of the company and Respondent's son-in-law.
3. The Miami-Dade Police Department conducted an investigation after receiving an anonymous letter stating that Respondent asked Victec employees to contribute to a mayoral candidate's campaign and reimbursed the employees for their contributions. According to Investigator Koop of the Miami-Dade Police Department, the evidence collected did not reach the standard for a criminal violation; therefore, no charges were filed against Respondent as a result of this investigation.
4. Complainant is an employee of the Florida Elections Commission. Based on the information obtained during the investigation of FEC 01-265, the Commission instructed Commission staff to file a complaint against Respondent.

I. Section 106.08(1), Florida Statutes. (Count 1 - 4)

5. Commission staff investigated whether the Respondent violated this section of the election laws by making a \$2,500 contribution to the Alex Penelas 2000 mayoral campaign.
6. According to the complaint, Respondent indirectly contributed five \$500 contributions to the Miami mayoral candidate Alex Penelas.

24-04-407-3923

7. Miami-Dade police interviewed Respondent's son-in-law and the five contributors during their investigation. Miami-Dade police provided Commission staff with copies of the sworn statements from the witnesses.

8. Luis Thula, president of Victec Environmental Services, Inc., gave a sworn statement to the Miami-Dade police department on August 7, 2001. According to a sworn statement by Mr. Thula, Respondent's son-in-law, Respondent instructed him to find five people to make a donation of \$2,500 to the Alex Penelas Mayoral Campaign. He acknowledged that he asked five Victec employees to contribute \$500. He stated the five employees were Ray Rodriguez, Pedro Rodriguez, Hector Munio, George Pattis and Carolina Caceres. He stated that Respondent gave him the money to reimburse the employees.

9. On July 5, 2001, Miami-Dade police interviewed Reynaldo Rodriguez. He related in his sworn statement that he was the operations manager for Victec. He related that Mr. Thula requested that he make a \$500 contribution to the 2000 mayoral campaign of Alex Penelas. He stated he wrote a check to the Penelas campaign from his personal account. He added that Mr. Thula reimbursed him with \$500 cash. He stated that Mr. Thula suggested the amount of the contribution.

10. Miami-Dade police also interviewed Pedro Rodriguez. He stated that Ray Rodriguez and Mr. Thula requested that he make a \$500 donation to the Penelas campaign. He stated that Mr. Thula told him that he would reimburse the money to him. Ray Rodriguez was present at the time. He explained that he did not have a personal checking account; therefore, he asked his wife to write a check to the Alex Penelas campaign. He acknowledged that the \$500 contribution was reimbursed.

11. According to the sworn statement from Ana Rodriguez, she never worked for Victec. She added that her husband, Pedro Rodriguez, worked for the company and requested that she write a check to the Penelas campaign. She stated that her husband told her that his boss, Ray Rodriguez, asked him to make the contribution. She stated that a couple of days after giving her husband the check, he gave her the money back in cash and she deposited the money into her checking account.

12. According to the sworn statement of George Pattis, he was a marketing representative for Victec. Mr. Pattis related that Mr. Thula asked him to write a personal check to Mr. Penelas' campaign for \$500. He acknowledged that he gave a personal check for the Penelas campaign to Mr. Thula. He stated he submitted an expense form to the comptroller and received a reimbursement check.

13. According to police records, Detective Velken interviewed Hector Munio on July 5, 2001. Mr. Munio related that in June of 2000, while in a meeting with other employees, Mr. Thula asked each of them to make a five hundred-dollar contribution to the Alex Penelas campaign. Mr. Munio stated that Mr. Thula explained that he would reimburse them, upon receiving their personal check. He admitted giving Mr. Thula a \$500 check on July 13, 2000 and receiving \$500 cash from Mr. Thula. Mr. Munio stated that he deposited the \$500 into his personal checking account on July 14, 2000, along with other monies. (According to Mr.

Munio's monthly bank statement, the deposit was made on Monday, July 17, 2000, instead of July 14, 2000.)

14. On June 5, 2001, Miami-Dade police interviewed Carolina Careres. Ms. Caceres related that she worked for Victec from 1999 until April of 2001. She stated that the president of the company, Mr. Thula, asked her to make a contribution to the Alex Penelas campaign. She explained that she wrote a check to the Penelas campaign and gave it to Mr. Thula and Mr. Thula gave her \$500 cash, which she deposited into her personal account.

15. Copies of Mayor Penelas' campaign treasurer's reports were procured from the filing officer. According to the campaign treasurer's report, R. Rodriguez, A. Rodriguez, Mr. Munio, Mr. Pattis and Ms. Caceres each gave \$500 to the Penelas campaign.

16. On June 21, 2002, Commission staff received a written statement from Benedict Kuehne, Respondent's attorney, on behalf of Respondent. The written statement reads,

During the 2000 campaign for Miami-Dade County Mayor, Jose Casal made no campaign contribution to Mayor Penelas. He was unaware of the statutory limitations on campaign contributions set out in [Section] 106.08(1) or the equivalent federal law. He never inquired of Victec employees whether they would consider contributing to the Mayor Penelas campaign, and obtained no commitments from Victec employees to contribute to the campaign.

17. On July 10, 2002, Commission staff faxed a questionnaire affidavit to Respondent's attorney. In an affidavit, Commission staff questioned Respondent about the money he allegedly gave to his son-in-law, Mr. Thula, and what instructions, if any, were given to Mr. Thula. Mr. Kuehne, Respondent's attorney, stated that Respondent was not in the country but he faxed a copy of the affidavit to Respondent and advised Respondent to contact him. Commission staff spoke with Mr. Kuehne on July 15, 2002; he informed Commission staff that he had not spoken with his client since he faxed the affidavit. As of this date, the affidavit has not been returned to Commission staff.

IV. Conclusion.

18. It appears that the Respondent is aware that he, as a foreign national, is precluded by federal law from making any political contributions to political campaigns in the United States since he did not make any contributions to Mayor Penelas' reelection campaign in his own name.¹

19. Respondent indirectly made five \$500 contributions to Mayor Penelas' reelection campaign through Victec employees who were asked to contribute by Respondent's son-in-law and president of Victec, Luis Thula. The Respondent did not attempt to give money in his own


¹ Pursuant to directions from the Florida Elections Commission, this matter was referred to the Federal Elections Commission after the Commission's last meeting.

name; he indirectly gave five \$500 contributions in Victec employees' names, thereby demonstrating that he was aware that he as a foreign national was unable to legally contribute to Mayor Penelas' campaign.

20. It also appears that the Respondent is aware that under Florida law, the maximum contribution that can be given to a candidate during an election is \$500 since each of the five contributions was exactly \$500. The Respondent did not attempt to give one \$2,500 contribution; he gave five \$500 contributions.

21. Under these circumstances, I recommend that the Commission find probable cause to charge the Respondent with five counts of willfully violating Section 106.08(1), Florida Statutes.²

Respectfully submitted on July 17, 2002,



Phyllis Hampton
General Counsel

Copy furnished to:
Barbara M. Linthicum, Executive Director
Margie B. Wade, Investigator Specialist

² Section 106.37, Florida Statutes, provides that a person willfully violates Chapter 106, Florida Statutes, if the person:

...commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited...or does not commit an act while knowing that, or showing reckless disregard for whether the act is required....A person knows that an act is prohibited or required if the person is aware of the provision...which prohibits or required the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under this chapter if the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation....